

CLARK HILL, PLC

151 S. Old Woodward Ave., Ste. 200
Birmingham, Michigan 48009

Telephone: (248) 988-1817

Facsimile: (248) 988-2336

David M. Blau (MI P52542) (Pro hac vice admission pending)

Hearing Date: February 4, 2019 at 10:00 a.m.

Objection Deadline: January 26, 2019 @ 4:00 p.m.

Attorneys for Lakewood Shopping Center, LLC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

_____	x	
	.	Chapter 11
	.	
In re:	.	Case No. 18-23538-rdd
	.	
SEARS HOLDINGS CORPORATION.,	.	
<i>et al.</i> ,	.	(Jointly Administered)
	.	
Debtors.	.	
_____	x	

**LAKEWOOD SHOPPING CENTER, LLC'S OBJECTION AND RESERVATION
OF RIGHTS TO NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION
OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION
WITH GLOBAL SALE TRANSACTION**

Lakewood Shopping Center, LLC ("Landlord"), through counsel, hereby submits this objection and reservation of rights (the "Objection") to the Debtors' Notice of Cure Costs and Potential Assumption of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction (the "Cure Notice"), and respectfully represents as follows:

Introduction

1. On October 15, 2018, the above captioned debtors (the "Debtors") filed a petition for relief pursuant to Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the Southern District of New York (the "Court").

2. On January 18, 2019, the Debtors filed their Cure Notice [Docket No. 1731] (“Cure Notice”). Per the Cure Notice, the Debtors indicated the contracts and leases to be potentially assumed and assigned and the corresponding cure costs associated with each. The amount set forth in the Cure Notice does not reflect all outstanding balances owing to the Landlord under the Lease, and the proposed amount does not include accrued but unbilled charges which may be due in the future under the Lease.

3. The amount set forth in the Cure Notice does not reflect the outstanding balance due and owing to the Landlord under the Lease, and the proposed cure amount also does not account for accrued but unbilled charges which may come due in the future or for attorney’s fees. Therefore, the cure amount set forth by the Debtors must be modified to reflect the additional charges owing, as well as recognize the liability of the Debtors to pay for the accruing charges due under the Leases and attorney’s fees, as set forth herein.

Objection

The Cure Amounts, Including Attorneys’ Fees, Under the Lease Must be Paid

4. As a condition to any assumption and assignment of the Leases, all defaults must be cured upon assumption. 11 U.S.C. §365(b)(1)(A). The Landlord hereby objects to the proposed cure amount set forth in the Cure Notice.

5. As of the date of this Objection, the correct cure amount is set forth below (the claim is being referred to as a “Cure Claim”. The Cure Claim set forth reflects the base cure claim amount subject to additional qualifications and modifications (such as reimbursement of attorney’s fees) as more fully set forth below:

Debtor's Store #	Landlord	Shopping Center	Landlord's Cure Claim	Debtor's Anticipated Cure Claim	Exhibit
3155	Lakewood Shopping Center, LLC	Lakewood (Belleville, MI)	\$71,184.46 \$1,000 Attorney's Fees \$72,184.76	\$0.00	A

6. Landlord reserves its right to amend the cure amount to include all amounts owing through the date of assumption.

7. The Cure Amount set forth above, pursuant to the terms of the Lease and 11 U.S.C. §365(b), includes a reasonable amount for attorneys' fees actually incurred as a result of the Debtors' bankruptcy case in the approximate amount of \$1,000. See, e.g., *In re Pelican Pool*, 2009 Bankr. LEXIS 4623 (Bankr. D.N.J. July 27, 2009); *In Westview 74th Street Drug Corp.*, 59 B.R. 747, 757 (Bankr. S.D.N.Y. 1986) (payment of attorneys' fees required as condition to lease assumption), *Travelers Cas. & Su. Co. Co. of A. v. Pacific Gas and El. Co.*, 127 S. Ct. 1199, 1203 (2007) (holding that a party is entitled to be reimbursed for its attorneys' fees when there exists an "enforceable contract allocating attorneys' fees"); *In re East 44th Realty, LLC*, No. 07 Civ 8799, 2008 U.S. Dist. LEXIS 7337 (S.D.N.Y. 2008) affirming bankruptcy court's finding that a \$1.7 million settlement of attorneys' fees to a landlord was reasonable.); *In re Beltway Medical, Inc.*, 358 B.R. 448, 453 (Bankr. S.D. Fla. 2006) "Where the trustee or debtor-in-possession fails to perform the primary obligation under the lease (i.e. to pay rent), and the landlord incurs legal fees seeking to obtain payment, it follows that the attorneys' fees, if authorized under the lease and linked to enforcement of the payment obligation, are entitled to the same administrative priority as the rent obligation"); *In re Entertainment, Inc.*, 223 B.R. 141, 152-154 (Bankr. E.D. Ill. 1998) (attorneys' fees must be paid as provided for in the assumed lease). The Debtors are

obligated to cure all defaults under the Leases, and compensate the Landlords for their actual pecuniary losses as a result of defaults under the Leases. See 11 U.S. C. §365(b)(1)(A) and (B).

8. The contact information for the Objecting Landlord to discuss this cure objection is:

David M. Blau, Esq.
dblau@clarkhill.com
Fax: (248) 988-2336
Telephone: (248) 988-1817

9. Landlord reserves its right to amend its Cure Claim to account for accrued but unpaid percentage rent and taxes and further amounts allowed by applicable bankruptcy and non-bankruptcy law, which have not yet been billed or have not yet become due under the terms of the Lease.

10. Section 365(b) requires that a debtor cure all defaults in conjunction with a lease assumption.

11. In addition to rent and related monthly charges, attorney's fees, costs, and interest, some charges for which the Debtors bear responsibility under the Lease have not been calculated such as accrued and unbilled taxes and percentage rent.

12. Landlord reserves the right to increase or further reconcile the cure claims set forth herein for items such as, but not limited to, claims for rent, taxes, costs, fees, and any additional cure amounts due under the Lease, as the Debtor is still in the property and are accruing expenses.

Reservation of Rights and Joinder

13. The Landlord reserves any and all rights to supplement or amend this Objection and expressly reserve the right to object to any additional relief sought by the Debtors in connection with the Leases.

14. The Landlord joins in any objections filed by the Debtors' other landlords with respect to the Cure Notice to the extent that such objections are not inconsistent with this Objection.

15. To the extent that rent, attorneys' fee or other charges continue to accrue either before or after a potential assignment, or Landlord suffers other pecuniary losses under its Lease, Landlord reserves its right to amend its cure amounts for such amounts or for any other reasons.

16. Landlord reserves all rights to contest the assumption and assignment of its Lease.

WHEREFORE, Landlord respectfully requests that the Court deny the relief requested in the Cure Notice as to the Lease in accordance with this Objection and grant the Landlord any additional and further relief the Courts deems just and proper.

Respectfully submitted,

CLARK HILL, PLC

Dated: January 25, 2019

/s/ David M. Blau

David M. Blau (MI P52542) (Pro hac vice admission
pending)

151 S. Old Woodward Ave., Ste. 200
Birmingham, MI 48009

Tel. (248) 988-1817

Fax. (248) 988-2336

dblau@clarkhill.com

Counsel to Lakewood Shopping Center, LLC

EXHIBIT “A”

Database: SBCL_PROD		Schostak Aged Delinquencies with Monthly Recurring Charges						Page: 1	
		Production						Date: 1/24/2019	
		Date: 1/24/2019						Time: 08:39 AM	
Invoice Date	Category	Source	Amount	Current	30	60	90	120	Current Recurring Charges
415LAK-KMAR05 Kmart #3155		Master Occupant Id: KMAR05-1		Day Due: 1		Delq Day: 10		RNT MINIMUM RENT 21,006.83	
Cheryl Schwartz/ CH11/10-16-18		A0100 Current		Last Payment: 1/7/2019		21,006.83			
847-286-1696									
8/23/2018	TAX TAX REIMBL	2018 Summer Taxes	44,413.56	0.00	0.00	0.00	0.00	44,413.56	Total Recurring: 21,006.83
1/24/2019	TAX TAX REIMBL	2018 WINTER TAX	26,770.90	26,770.90	0.00	0.00	0.00	0.00	
Kmart #3155 Total:			71,184.46	26,770.90	0.00	0.00	0.00	44,413.56	
LEAS 415LAKKMAR05 Total:			71,184.46	26,770.90	0.00	0.00	0.00	44,413.56	
Grand Total:			71,184.46	26,770.90	0.00	0.00	0.00	44,413.56	

Page 8 of 9
INVOICE

SCHOSTAK BROTHERS & COMPANY, INC.
LAUREL PARK PLACE OFFICE BUILDING
17800 LAUREL PARK DRIVE NORTH, SUITE 200C
LIVONIA, MICHIGAN 48152
(248) 262-1000

BILL TO:

INVOICE DATE:

1/24/2019

Sears Holding Corp.
Property Tax Dept; B2-110A
3333 Beverly Road
Hoffman Estates, IL 60179

PROPERTY: Lakewood
TENANT NUMBER: KMAR05
TOTAL DUE: \$26,770.90
DESCRIPTION: 2018 Winter Taxes
DUE DATE: Upon Receipt

RE: K Mart #3155

DETAILED DESCRIPTION OF CHARGE:

Below is your proportionate share of the 2018 Winter Real Estate Taxes for your store at Lakewood Shopping Center in Belleville, Michigan.

Taxes	\$ 47,976.52
Pro Rata Share	<u>55.80%</u>
TOTAL AMOUNT DUE	<u><u>\$26,770.90</u></u>

PLEASE REMIT PAYMENT TO:

Lakewood Shopping Center, LLC
Suite 200C
17800 Laurel Park Drive, N.
Livonia, MI 48152

PLEASE INDICATE YOUR LEASE ID (KMAR05) ON YOUR CHECK.
THANK YOU!

Charter Township of Van Buren
 Sharry A. Budd, Treasurer

46425 Tyler Road
 Van Buren Township, MI 48111
 (734) 699-8903



COPY

Property ID Number
 83 074 01 0007 005

School District: 83-VAN BUREN



011*003*03848*****ALL FOR AAD
 SCHOSTAK BROS INC
 LAKEWOOD SHOP CENTER
 17800 N LAUREL PARK DR STE 200C
 LIVONIA MI 48152-3985

Property Address:

2095 RAWSONVILLE RD

PRE or MBT %: 0

Legal Description:

19A7B2-14B 15 TO 27 PT OF LOTS 7 TO 10 INCL BEG AT NW
 COR OF LOT 10 TH S62DEG 32M E 672.45FT TH DUE E
 270.60FT TH S58DEG 00M E 228.40FT TH S29DEG 40M W
 192.27FT TH N1DEG 20M 49S W 255.55FT TH S84DEG 00M W
 209FT TH S11DEG 31M 51S W 150FT TH N78DEG 28M 09S W
 509FT TH N0DEG 32M 0S W 542.83FT POB ALSO LOT 11 EXC
 NLY PT BEG AT NW COR TH DUE E 179.45FT TH DUE S
 36.62FT TH S69DEG 53M 23S W 85.48FT TH S48DEG 03M 44S
 W 113.41FT TH S15DEG 21M 23S W 53.50FT TH N0DEG 32M
 30S W 193.46FT POB ALSO LOTS 12 TO 14 INCL EXC ELY
 25FT OF N 318FT OF LOT 12 ALSO EXC NLY 318FT OF LOTS

Taxable Value	Assessed Value
2,739,532	2,781,400

Tax Authority	Tax Rate	Amount
COUNTY	0.98970	2,711.31
JAIL	0.93810	2,569.95
WC PARKS	0.24590	673.65
HCMA	0.21290	583.24
ZOO AUTHORITY	0.10000	273.95
WCCC	3.24080	8,878.27
TWP OPERATING	0.90470	2,478.45
PUBLIC SAFETY	6.43170	17,619.84
LIBRARY - OPER	1.43550	3,932.59
DIA AUTHORITY	0.20000	547.90
RESA - ENHANCE	2.00000	5,479.06
LIBRARY - DEBT	0.64000	1,753.30
ADMIN FEE		475.01
SUBTOTAL:		47,976.52
Penalty and interest:		
Total Due:		

**SEE REVERSE SIDE FOR
 IMPORTANT INFORMATION**

FISCAL YEAR
 Township: Jan 1, 2019 to Dec 31, 2019
 Wayne County: Dec 1, 2018 to Nov 30, 2019

MAKE CHECK PAYABLE TO VAN BUREN TOWNSHIP

2018 WINTER TAX STATEMENT - RETURN THIS VOUCHER WITH PAYMENT

CHARTER TOWNSHIP OF VAN BUREN
 SHARRY A. BUDD, TREASURER

46425 TYLER ROAD
 VAN BUREN TOWNSHIP, MI 48111

83 074 01 0007 005



Total taxes due if paid
 No Later Than 2/28/19 **47,976.52**

SCHOSTAK BROS INC
 LAKEWOOD SHOP CENTER
 17800 N LAUREL PARK DR STE 200C
 LIVONIA MI 48152-3985

